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January 23, 2009

**DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 1, 2008

Case Number: TSO-0660

This Decision concerns the eligibility of xxxxxxxxxxxx. (hereinafter referred to as "the individual") to hold an access authorization¹ (or "security clearance") under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should not be restored at this time.

I. Background

The individual is employed by a Department of Energy (DOE) contractor in a position that requires him to hold a security clearance. On April 14, 2008, the individual disclosed to the DOE that he had received a citation for Driving Under the Influence (DUI) relating to a car accident that had occurred in February 2007.² Exhibit (Ex.) 6. In order to resolve questions arising from his alcohol-related incident, the local DOE security office (LSO) conducted a Personnel Security Interview (PSI or Ex. 5) with the individual in December 2007. The PSI did not resolve the concern and the LSO referred the individual to a DOE Consultant-Psychologist (DOE Psychologist) for a psychological evaluation. The DOE Psychologist evaluated the individual in February 2008 and memorialized his findings in a report dated April 2008. (Psychological Report or Ex. 3). Based on his findings, the DOE Psychologist concluded that the individual suffers from an Alcohol-Related Disorder, Not Otherwise Specified (NOS) pursuant to the criteria set forth in the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, Text Revised (DSM-IV-TR). *Id.* at 9. The DOE Psychologist opined in the Psychological Report that the individual's disorder was "not in remission, since he is

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a).

² In June 2007, the individual initially disclosed to DOE his involvement in a car accident that occurred in February 2007. Ex. 8. At the time of his disclosure, the individual awaited the results of his blood alcohol test but had not been arrested or formally charged with a DUI. He later received his test results from the Department of Motor Vehicles (DMV) in May 2007, which indicated an illegal blood alcohol content (BAC) of .11%. Ex. 5 at 66. In October 2007, the individual received citations for driving and/or being in actual physical control while under the influence of intoxicating liquor and unlawful operation of a motor vehicle without the use of a seatbelt and was summoned to appear in court in November 2007. Ex. 7 at 1.

still drinking alcohol” and regarded the individual as having a condition which causes, or may cause, a significant defect in his judgment or reliability. *Id.*

On June 30, 2008, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J respectively).³

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. On August 4, 2008, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. I subsequently convened a hearing within the time prescribed in the regulations. At the hearing, four witnesses testified. The DOE Psychologist testified on behalf of the agency. The individual presented his own testimony and that of two witnesses. In addition to the testimonial evidence, the DOE submitted eleven exhibits into the record and the individual tendered ten exhibits. The transcript taken at the hearing shall be hereinafter cited as “Tr.” Various documents that were submitted by the DOE Counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as “Ex.” Documents submitted by the individual shall be cited as “Ind. Ex.”

II. The Notification Letter and the Security Concern at Issue

As previously noted, the LSO cites two criteria, Criteria H and J, as bases for suspending the individual’s security clearance. With regard to Criterion H, the LSO cites the diagnosis of the DOE Psychologist that the individual meets the criteria for Alcohol-Related Disorder NOS. Ex. 1 at 4. As for Criterion J, the LSO relies on the DOE Psychologist’s opinion⁴ and the following information: (1) the individual was summoned to appear in court on the charge of Driving Under the Influence of Intoxicating Liquor after the Highway Patrol responded to an accident in which he lost control of his vehicle, hit a median, blew out a tire, and ran into oncoming traffic on February 1, 2007; (2) the individual sustained a fractured rib and separated shoulder as a result of his alcohol-related accident on February 1, 2007; (3) despite his involvement in a recent alcohol-related accident in which he sustained significant injuries and for which he was subsequently removed from the Human Reliability Program (HRP)⁵, the individual continues to consume alcohol; (4) from 1997 to

³ Criterion H relates to information that a person has “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has “[b]een or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j).

⁴ We have held that this language encompasses a diagnosis of “Alcohol-Related Disorder NOS.” *See, e.g., Personnel Security Hearing*, Case No. TSO-0606 (2008); *Personnel Security Hearing*, Case No. TSO-0524 (2007); *Personnel Security Hearing*, Case No. TSO-0462 (2007). These three decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

⁵ The DOE’s Human Reliability Program (HRP) was established to address the need for individuals involved in the nuclear weapons program to meet the highest standards of reliability, including physical and mental stability. HRP

2007, the individual admitted to drinking three to four beers plus two to three shots over a six-hour period once every two weeks; and (5) the individual admitted to experiencing hangovers as a result of his use of alcohol. *Id.* at 4-5.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criteria H and his alcohol use under Criterion J. The security concerns associated with Criteria H and J are as follows. As for Criterion H, a mental illness such as an alcohol disorder can cause a significant defect in a person's psychological, social and occupational functioning which, in turn, can raise concerns from a security standpoint about possible defects in a person's judgment, reliability, or stability. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (*Revised Adjudicative Guidelines*). With regard to Criterion J, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G. The excessive use of alcohol also raises a security concern because of its intoxicating effect. "Because the use of alcohol at the very least has the potential to impair a user's judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases." *Personnel Security Hearing*, Case No. VSO-0417 (2001).

III. Findings of Fact

The individual's admissions to the concerns in the Notification Letter are incorporated herein. In addition, after a thorough review of the exhibits, I make the following findings of fact.

The individual had his first drink of alcohol in his senior year of high school, sometime in late 1997 or early 1998. Ex. 5 at 16-17. During his time in high school, he would have a sip of his dad's beer about once a month. *Id.* at 33. The individual had a rule to never drink alone because he considered a person who drinks alone to be an "alcoholic," so he always drank with family or friends. *Id.* at 38. He never found it fun drinking all of the time and only drank during social events. *Id.* at 18. The most alcohol he ever drank was at a high school party where he consumed 10-11 beers, however, the individual considers himself to be a "lightweight" who can not party "too hard." *Id.* at 24; 30.

After high school, he enlisted in the military from 1998 until 2004. *Id.* at 29. He admitted to drinking alcohol while in the military and would have up to six beers at a time on occasion. Ex. 3 at 5. On the night of his 23rd birthday in 2002, the individual drank over four to five shots. Ex. 5 at 30-32. He drank so much that he couldn't walk straight and needed the help of his friends to get back to his dorm room where he passed out. *Id.* at 32. The individual is sure that he had a hangover that night and probably a total of two or three hangovers during his time in the military. *Id.* at 35. The

certification is required for those employees assigned to sensitive positions relating to nuclear weapons and nuclear materials. Employees entering the program must possess a Q (Top Secret) clearance and submit to a multi-phase certification process that is designed to identify and evaluate behaviors and conditions that may disqualify employees from holding HRP positions.

individual had a higher tolerance for alcohol during this time and would sometimes consume eight to nine beers before becoming intoxicated. *Id.* at 39. Although on occasions he had driven a car after drinking “one beer,” he maintained that he never drove while intoxicated during his military service. *Id.* at 29-30.

From June 1998 until February 2007, the individual remained “pretty consistent” with his alcohol use. *Id.* at 24-26. On his days off of work, usually once every two weeks, he would consume three to four beers in addition to two to three shots of alcohol. *Id.* at 26-27. According to the individual, he would “spread ‘em out” throughout the night. *Id.* at 26. During this time, he went to the bar with friends probably once a month and became intoxicated twice a month. *Id.* at 26-27. The individual stated that he usually did not drink at home but only when he was out with other people. *Id.* at 26. The individual maintained that he was not a “big drinker” and did not drink everyday but liked to go out and have fun. *Id.* at 28.

One night in February 2007, the individual and his friend went to a club. *Id.* at 45. According to the individual, he arrived at the club at 10:30 pm and had two mixed drinks, one beer and one shot. *Id.* at 45. The individual stopped drinking around 2:30 am and left the club at 4:00 am to take his friend home. *Id.* Shortly thereafter, the individual decided to drive himself home from his friend’s house. *Id.* at 46. Around 5:00 in the morning, the individual was involved in a car accident where his tire blew out and he hit a median and an oncoming car. *Id.* at 60-61. As a result of the collision, he sustained a fractured rib and separated shoulder. *Id.* at 68. He was immediately transported to the hospital where they tested his blood alcohol level. *Id.* at 63-64. In May 2007, the DMV notified the individual by mail that his test results indicated a blood alcohol level of .11%, which was over the legal limit in that jurisdiction.⁶ *Id.* at 66. Subsequently, in October 2007, the individual received a citation for Driving Under the Influence and a summons to appear in court. *Id.* at 75-77. In June 2007, the individual self-reported this incident to DOE, however, he initially failed to mention that the accident involved alcohol because he did not know that he was charged with a DUI until October 2007. Ex. 3 at 7. Based on his disclosure, the individual was subsequently removed from the HRP program pending further evaluation and a PSI was recommended to obtain the details of this alcohol related incident. *Id.*; Ex. 10 at 2.

At his December 2007 PSI, the individual reported that he had consumed two bottles of beer, once a month since his alcohol related incident in February 2007. Ex. 5 at 20-21. At the time of his PSI, the individual maintained that he had not been intoxicated since February 2007 and believed that it would take five or six beers over a period of two hours to make him intoxicated. *Id.* at 21-22. At his February 2008 psychological evaluation, the individual denied having an alcohol problem and reported his current use of alcohol as one to two beers per month since February 2007. Ex. 3 at 7. Although the individual had decreased his alcohol consumption at the time of the February 2008 psychological evaluation, the DOE Psychologist did not believe that the individual had demonstrated adequate evidence of rehabilitation or reformation. *Id.* In order to make this showing, the DOE Psychologist recommended that the individual remain abstinent from alcohol for a period of two years along with participation in a substance abuse program or alcohol course through his EAP program. *Id.*

⁶ According to the individual, the May 2007 letter from the DMV included the results of the blood alcohol test and did not indicate that he had been charged with a DUI. *Id.* at 80-81.

IV. Regulatory Standard and the Individual's Burden

The applicable regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). There is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for the granting of security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting him an access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

V. Hearing Testimony

A. The DOE Psychologist

The DOE Psychologist was present during the entire proceeding and testified at the beginning and the end of the hearing. During his first testimony, the DOE Psychologist testified that he diagnosed the individual with Alcohol-Related Disorder NOS because in his opinion, the individual has a problem but doesn’t necessarily meet the full criteria of an alcohol abuse diagnosis. Tr. at 19-20. The DOE Psychologist explained that a DUI could potentially raise a concern about an employee, especially if it is a recent offense. *Id.* at 18-19. He further explained that according to the DSM-IV-TR, any type of hazardous drinking resulting in a legal consequence would be one criteria of alcohol abuse. *Id.* at 17.

The DOE Psychologist testified that alcohol is a potentially dangerous situation for the individual, in that it caused him to have a DUI accident where he was significantly injured. *Id.* at 21. The DOE Psychologist noted that in his psychological evaluation in February 2008, the individual reported that he continued to drink one or two beers a month after his DUI accident. *Id.* at 17-18; 21-22. The DOE Psychologist testified that although the individual did not believe that he had a drinking problem, “something changed in his mind” because the individual told him that he “cut back” on his drinking after his DUI accident. *Id.* at 18; 22-23. Because the individual had reduced his alcohol consumption after his DUI accident, the DOE Psychologist concluded that the individual wasn’t presently abusing alcohol, but had abused alcohol in the past. *Id.* at 21. The DOE Psychologist testified that individual’s history of excessive alcohol use, his recent DUI offense and his alcohol consumption after his DUI, are all significant factors that support his concern that the individual currently has a problem with alcohol. *Id.* at 17-18.

In his subsequent testimony, the DOE Psychologist stated that he would measure the individual's period of sobriety beginning November 2007, the date the individual testified that he stopped consuming alcohol. *Id.* at 96-97. Based on the individual's testimony, the DOE Psychologist noted that it was a positive indicator that the individual has remained abstinent from alcohol use since November 2007 and concluded that the individual's prognosis had improved since he evaluated him, over six months ago. *Id.* at 88; 98. The DOE Psychologist stated that although the individual showed good faith by remaining sober since November 2007, his concern remained because the individual had not taken steps towards completing the treatment. *Id.* at 102-103. To alleviate his concern, the DOE Psychologist recommended that the individual maintain his sobriety for a period of two years and enroll in and complete a substance abuse treatment program. *Id.* at 97.

B. The Individual

The individual testified that he never knew he drank excessively or abused alcohol while he was in the military. *Id.* at 56. He stated that he would just "go out with the guys and have fun." *Id.* He stated that he would show up to work everyday and do his job. *Id.* Even after his DUI accident in February 2007, he did not believe that he abused alcohol. *Id.* at 60. He thought that he was the "normal, average, young, 25 year old man" and thought that his behavior was within in the prescribed societal norm. *Id.*

The individual argued that he did not continuously drink after his DUI accident and later explained that there were "gaps in his drinking." *Id.* at 65. According to the individual, he didn't drink "every day, every month, every week, beyond...a social thing, like a family gathering." *Id.* The individual stated that at his December 2007 PSI, he told the investigator that he could not promise that he would never have one drink again, but could promise that he would never get to the point of intoxication. *Id.* The individual stated that he didn't understand why his having one "sporadic" drink, "even after the fact" remained an issue. *Id.* at 65-66.

The individual maintained that between February 2007 and November 2007, his frequency of drinking had become very sporadic, with two to three months in between drinks. *Id.* at 95-96. He stated that his last drink of alcohol was in November 2007 at his girlfriend's family gathering. *Id.* at 96. The individual stated that his beer in November was the "last one" but later admitted that he had consumed alcohol in "maybe July and then something else before then." *Id.* He later testified that during his psychological evaluation, he did not admit to drinking one to two drinks per month and believed his drinking during this time to be "very rare." *Id.*

The individual stated that his lifestyle has changed due to his work schedule and that he currently has "no social life." *Id.* at 85. He stated that has little time to socialize with anybody other than his girlfriend. *Id.* The individual testified that he has the same friends he had prior to his DUI accident and that he communicates with them occasionally. *Id.* at 85-86. If his access authorization were to be restored, the individual believes that he could continue to socialize with his same friends and not drink alcohol. *Id.* at 86-87.

The individual stated that he was "shaken up" after his DUI accident. *Id.* at 70. He maintained that the accident changed him a lot even though he continued to drink. *Id.* He argued that if drinking was going to cost him his job or his health, then he has no absolutely no problem giving it up. *Id.*

The individual maintained that he had learned his lesson. *Id.* at 71-72. He stated that this was a costly mistake that he does not intend to repeat. *Id.* at 72. The individual maintained that he had no intentions to consume alcohol in the future. *Id.*

C. The Individual's Girlfriend

The individual's girlfriend has known the individual since June 2006 and has lived with him since November 2006. *Id.* at 30; 39. She maintained that the individual does not currently have a "drinking problem." *Id.* at 32. She testified that they do not have alcohol in their house and last recalled seeing the individual consume "one beer" in November 2007, while at a family gathering. *Id.* at 31. She stated that at her family gatherings, her brother would sometime "tease" the individual for not consuming alcohol. *Id.* at 34; 41. She described the individual as a "social drinker" who rarely went out with his friends. *Id.* at 32. She stated that when they socialized with joint friends, she never saw him drink alcohol except at a club on one occasion. *Id.* at 40.

She testified that prior to his DUI accident, the individual drank socially when out with friends but that on most occasions, he went out with her. *Id.* at 32-33. The individual's girlfriend stated that she does not drink and is unaware of the amount of alcohol the individual would consume when he was out with his friends. *Id.* at 33. She stated that she was never concerned that the individual was drinking excessively. *Id.* She testified that following his DUI accident, the individual stated that he was "very lucky to be alive." *Id.* at 32.

The individual's girlfriend was shocked that the individual was diagnosed with an alcohol disorder. *Id.* at 35; 37. She stated that she read the Psychological Report and believed that it incorrectly reported the individual's current alcohol consumption. *Id.* at 31. She stated that the individual has not attended any alcohol related training because he has been working two jobs to make up for the loss of income. *Id.* at 35.

D. The Individual's Friend

The individual's friend is a colleague who has known the individual for about two and a half years. *Id.* at 43. He testified that the individual is a "great employee" and a "go-getter" who tries to do more than is required of him. *Id.* The individual's friend testified that he has not seen the individual consume alcohol since his clearance was suspended. *Id.* at 45; 49-50. He stated that the individual had "learned his lesson" because of the heartache he has suffered due to the loss of his job and having to work two jobs to pay his bills. *Id.* at 45.

The individual's friend testified that he observed the individual drink an "occasional beer" at softball games that they played together. *Id.* at 46. He stated that the individual would sometimes come to his house to drink coffee, socialize and play video games. *Id.* at 52. Other than the softball games and a boxing match, he and the individual have never gone out socially. *Id.* He believes that the individual will no longer drink in the future and that there would be no security concern if the individual's security clearance were to be restored. *Id.* at 46-47.

E. The Individual's Additional Documentary Evidence

In addition to the information referred to above, the individual submitted performance appraisals, a list of completed training, an interim evaluation, training counseling forms, certificates of appreciation and achievement, and requests for on-the-job training. Ind. Ex. A-F. The individual also submitted letters on his behalf from two colleagues and a former supervisor. Ind. Ex. G-I. Each of the letters states that the individual is a professional, competent and exemplary worker. *Id.* None of them, however, specifically address the individual's recent DUI and discuss how the individual took responsibility from it and has learned from his mistakes. *Id.*

The individual also presented a letter from a Substance Abuse Professional (SAP) who examined the individual four days before the hearing.⁷ In his letter, the SAP stated that he utilized the Substance Abuse Subtle Screening Inventory (SASSI-3), Multidimensional Addiction and Personality Profile (MAPP), and the Environmental Deprivation Scale (EDS)⁸, to assess the individual. Ind. Ex. J. The SAP noted that during this assessment, he extensively interviewed the individual about his drug, alcohol, work history, family and current life style. *Id.* Due to the findings of the evaluation and testing, the SAP recommended that the individual attend eight hours of Substance Abuse education to include relapse prevention and eight Self Help groups with an emphasis on drug and alcohol abuse. *Id.* The SAP noted that the results of all of the testing and interviews indicated that the individual is rated at Low Probability to Episodic Abuse risk for problem drinking and/or alcoholism and concluded that other than what he recommended, no further substance abuse evaluations and/or treatment was warranted. *Id.*

VI. Analysis

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors.

After due deliberation, it is my opinion that the individual's access authorization should not be restored at this time because I cannot conclude that restoring the access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Criterion J

⁷ In his letter, the individual's SAP indicates that he is also a licensed Drug Abuse Counselor who has knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance use and related disorders. Ind. Ex. J.

⁸ The EDS is a predictor of future law-violation behavior. Ind. Ex. J.

Based on the record in this case, I am unable to find that the individual has mitigated the security concern regarding his alcohol use for the following reasons.

As an initial matter, the individual did not convince me that he has abstained from alcohol since November 2007. In reaching this conclusion, I noted first that the individual had provided inconsistent statements to the DOE throughout this proceeding about his level of alcohol consumption. For example, in his December 2007 PSI and his February 2008 psychological evaluation, the individual reported his alcohol usage as one to two beers a month after his February 2007 DUI accident. At the hearing, the individual claimed his usage since the February 2007 accident was only “sporadic,” contending that he drank only every two to three months. Moreover, it was my view at the hearing that the individual did not testify candidly about his abstinence.

Furthermore, I did not accord much weight to the testimony of the individual’s girlfriend and friend, both who claimed that the individual had abstained from alcohol since November 2007. First, the girlfriend admitted that she did not interact with the individual while he socialized with his friends and was unaware of the individual’s drinking habits outside of her presence. Second, the individual’s friend stated that outside of softball games and occasional house visits, he and the individual rarely socialize together, indicating that he was not informed as to the extent of the individual’s current alcohol consumption or his history of alcohol abuse. On balance, I cannot find that either the individual’s girlfriend or friend corroborated the individual’s statement that he has abstained from alcohol since November 2007.

Even if it is true that the individual had maintained sobriety since November 2007, I could not conclude that he had mitigated the security concern with respect to Criterion J. In the administrative review process, Hearing Officers accord deference to the expert opinions of mental health professionals regarding the issue of rehabilitation or reformation. *See Personnel Security Hearing*, Case No. TSO-0562 (2008), *Personnel Security Hearing*, Case No. TSO-0462 (2007). The DOE does not have a set policy on what constitutes rehabilitation and reformation from alcohol diagnosis, but instead makes a case-by-case determination based on the available evidence. In this case, the DOE Psychologist testified that although the individual’s prognosis was good, he believes that the individual must complete the recommended substance abuse program and maintain two years of sobriety to demonstrate adequate evidence of rehabilitation and reformation. At the time of the hearing, the individual had not undergone any of the recommended alcohol-related treatment, counseling or education⁹ and was far short of achieving two years of sobriety.¹⁰

⁹ In his letter, the SAP also recommended that the individual complete substance abuse education classes and self help groups with an emphasis on drug and alcohol abuse. *See* Ind. Ex. J. At the time of the hearing, the individual had completed no counseling or treatment, other than a court-ordered, four-hour Victims Awareness Panel arising from his DUI arrest. Tr. at 78-80.

¹⁰ At the hearing, the individual did not appear to appreciate or understand the seriousness of his alcohol-related behavior. By the conclusion of the hearing, however, he acknowledged his alcohol problem and appeared motivated to address his alcohol disorder. Nonetheless, these positive factors do not outweigh the individual’s lack of rehabilitation or duration of sobriety.

It is significant, in my view, that the individual continues to associate with the same friends the he drank alcohol with prior to his DUI accident. The individual maintained at the hearing that due to his current work schedule, he has little time to socialize with them. However, the individual did not convince me that he will not regress to his previous lifestyle of excessive drinking and partying with his friends when he has more time. Furthermore, the individual lacks an adequate support network in his girlfriend's family, as evidenced by the fact that his girlfriend's brother continues to tease him when he does not drink alcohol at family gatherings.

In the end, based on my review of the individual's record, his history of past alcohol abuse and inconsistent statements, I agree with the recommendation of the of the DOE Psychologist that the individual demonstrate two full years of abstinence in addition to completing the recommended alcohol treatment to demonstrate adequate evidence of rehabilitation or reformation. Accordingly, I find that the individual has not mitigated the security concerns associated with Criteria J as of the date of the hearing.¹¹

B. Criterion H

The evidence before me is insufficient to mitigate the psychiatric diagnosis at issue. Although the DOE Psychologist opined that the individual's prognosis was "good" and his risk of relapse was "minimal," his concern remained unresolved because the individual had not completed any of the recommended alcohol-related treatment, counseling or education necessary to demonstrate rehabilitation or reformation and had not been abstinent for a period of two years. *See* Mitigating Condition 29(b) of the *Revised Adjudicative Guidelines*. While it is a positive factor that the individual enrolled in a treatment program after the hearing, that alone is not sufficient to allay the concerns associated with this Alcohol-Related Disorder NOS. As for the length of the individual's sobriety, I am reluctant to measure it from November 2007. Based on my observation of the individual's demeanor at the hearing, my assessment of his credibility in that venue, and my concern about the inconsistencies in his statements, I am not convinced that he stopped drinking in November 2007. Even if I accept November 2007 as the time of the individual's last drink, as did the DOE Psychologist, I must find that not enough time has elapsed for the individual to prove his reformation. Based on the foregoing, I find that the individual has not mitigated the security concerns with respect to Criterion H.

VII. Conclusion

¹¹ After the hearing, the individual enrolled in an alcohol treatment program. To complete the program, the individual must attend twenty group sessions and complete his treatment objectives. In an email to DOE Counsel, the individual's current outpatient manager reported that as of the closing of the record, the individual had completed eight group sessions, three hours each in duration. The individual's outpatient manager advised that the individual was "very involved in the program, displayed a very good understanding of his past problem and was committed to carrying out his commitments under the program to remain abstinent from alcohol." When advised of the individual's progress in this treatment program, the DOE Psychologist stated that it was a "very good sign" of the individual's commitment towards a sober and abstinent life and reiterated his opinion that the individual's prognosis is "good" and his chance of relapse is "minimal." Ex. 11. However, even if the individual were to complete his treatment program, he needs more time to demonstrate rehabilitation.

In view of Criteria H and J and the record before me, I cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Avery R. Webster
Hearing Officer
Office of Hearings and Appeals

Date: January 23, 2009